

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Petitioner,	:	
	:	
v.	:	No. 13-60006
	:	
OPEN DOOR RETAIL GROUP, INC.	:	
	:	
Respondent.	:	

PETITION OF THE NATIONAL LABOR RELATIONS BOARD
FOR ADJUDICATION IN CIVIL CONTEMPT
AND FOR OTHER CIVIL RELIEF

To the Honorable, the Judges of the United States
Court of Appeals for the Fifth Circuit:

The National Labor Relations Board (the “Board”) respectfully petitions this Court to adjudge Open Door Retail Group, Inc. (“Respondent”), in civil contempt for having failed and refused, and continuing to fail and refuse, to comply with the judgment entered by this Court on February 27, 2013.

In support of its petition, the Board, upon information and belief, alleges as follows:

I. Respondent, a Texas corporation with places of business located in Kemah, Texas, has been engaged in the business of operating various retail stores, including an art gallery, candy store, and souvenir shop along the Kemah Boardwalk.

II. Ron Larsen is the owner and president of Respondent.

III. On February 27, 2013, this Court entered a judgment (Exhibit 1) summarily enforcing both a Decision and Order issued by the Board on February 23, 2012 (Exhibit 2), and a Supplemental Decision and Order issued by the Board on September 10, 2012 (Exhibit 3). The Board's February 23, 2012 Decision and Order concluded that Respondent had violated Section 8(a)(1) of the National Labor Relations Act, 29 U.S.C. § 158(a)(1), by discharging employee Vanda Jordan for engaging in concerted activities with other employees for the purposes of mutual aid and protection. The Board's September 10, 2012 Supplemental Decision and Order fixed the amount of backpay owed to Jordan as a result of her unlawful discharge by Respondent.

IV. The Court's February 27, 2013 judgment directed Respondent, its officers, agents, successors, and assigns to comply with the Board's February 23, 2012 Decision and Order by, *inter alia*:

1. Ceas[ing] and desist[ing] from
 - (a) Discharging or otherwise discriminating against employees because they engaged in concerted activities for the purposes of mutual aid and protection, and to discourage employees from engaging in concerted activities.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 or the [National Labor Relations] Act.
2. Tak[ing] the following affirmative action necessary to effectuate the policies of the Act
 - (a) Within 14 days from the date of this Order, offer[ing] Vanda Jordan full reinstatement to her former job or, if

that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed.

- (b) Mak[ing] Vanda Jordan whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.
- (c) Within 14 days from the date of this Order, remov[ing] from its files any reference to the unlawful discharge of Vanda Jordan and, within 4 days thereafter, notify[ing] her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

The judgment also directed Respondent, its officers, agents, successors, and assigns to “make whole Vanda Jordan . . . by paying her in the amount of \$14,431, plus additional net backpay which accrues to the date the Respondent makes her a valid offer of reinstatement, plus interest accrued to the date of payment”

V. Inclusive of additional net backpay (\$954.00) and interest (\$1,077.00) accrued through February 28, 2014, Respondent shall owe the total amount of \$16,462.00 as of that date, pursuant to the Court’s February 27, 2013 judgment. (Exhibit 4, including Attachments A through D.)

VI. The Court’s February 27, 2013 judgment has been in full force and effect since its entry and at all material times Respondent has had notice and actual knowledge of its terms.

VII. Respondent has disobeyed and failed and refused to comply with this Court’s judgment by failing and refusing to: 1) offer Vanda Jordan reinstatement to her former job or to a substantially equivalent position; 2) pay her any amount

owed to her under the judgment; and 3) notify her in writing that it has removed any reference to her unlawful discharge from its files and that said discharge will not be used against her in any way. (Exhibit 5.)

VIII. By the acts described above in paragraph VII, and by like and related acts and conduct, Respondent has violated and disobeyed, and continues to violate and disobey, this Court's judgment entered on February 27, 2013, and accordingly is, and continues to be, in civil contempt of this Court.

WHEREFORE, the Board respectfully requests as follows:

1. That this Court forthwith issue an order requiring Respondent to serve and file a sworn answer to the allegations of this petition in which it shall admit or deny or meet by affirmative defense each allegation of said petition, and show cause, if any there be, why it should not be adjudged in civil contempt for disobeying and failing and refusing to comply with the February 27, 2013 judgment of this Court.

2. That following appropriate proceedings, Respondent be adjudged in civil contempt.

3. That upon adjudication, this Court enter an order requiring Respondent, its officers, agents, successors, and assigns to purge itself of such contempt by:

- (a) Within 10 days after entry of the contempt adjudication, offering Vanda Jordan full reinstatement to her former job or, if that job no longer

exists, to a substantially equivalent position of employment without prejudice to her seniority or any other rights or privileges that she previously enjoyed;

(b) Within 10 days after entry of the contempt adjudication, paying to the Board the total amount of \$16,462.00, which is the full amount due owing as of February 28, 2014, pursuant to the Court's February 27, 2013 judgment.

(c) Within 10 days after entry of the contempt adjudication, notifying Vanda Jordan that it has removed any reference to her unlawful discharge from its files and that said discharge will not be used against her in any way;

(d) Within ten (10) days after receipt of a Notice to Employees drafted by the Board, duplicating at its own expense and posting at all of its facilities and retail shops where notices to its employees are customarily posted, for a period of ninety (90) consecutive days, copies of the contempt adjudication and the Notice to Employees in the form prescribed by the Board and signed by a responsible officer on behalf of Respondent. Said notice shall state that Respondent has been adjudged in civil contempt of this Court for violating and disobeying the Court's February 27, 2013 judgment, and that it will undertake the action in purgation directed by this Court. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Respondent shall maintain such notices and copies of the contempt

adjudication in clearly legible condition throughout the posting period and insure that they are not altered, defaced, or covered by other material. Within fifteen (15) days after said posting, Respondent shall supply the Director of the Board's regional office in Fort Worth (819 Taylor Street, Room 8A24, Fort Worth, Texas, 76102-6178) with a signed copy of the notice and a certification of the dates and locations of posting. Upon reasonable notice, Respondent shall allow an agent of the Board access to any of its premises during the posting period to verify its compliance with this provision;

(e) Paying to the Board all costs, expenses, and reasonable attorneys' fees, calculated at the prevailing District of Columbia market rate, incurred by the Board in the investigation, preparation, presentation and final disposition of this proceeding. Respondent shall also pay any costs relative to a special master should this Court appoint one. All of said costs and fees, unless agreed to by the parties, shall be fixed by further order of this Court upon submission by the Board of a certified statement of such costs and expenses. Should any dispute arise respecting the Board's submission as to which this Court may determine that a hearing is desirable, this Court, in its discretion, may refer such dispute to a special master, upon such terms as this Court shall determine, for a report and recommendation;

(f) Filing a sworn statement with the Clerk of this Court, and a copy thereof with the Director of the Board's regional office in Fort Worth (819 Taylor Street, Room 8A24, Fort Worth, Texas, 76102-6178) and the Board's Contempt, Compliance & Special Litigation Branch in Washington (1099 14th

Street, N.W., Suite 10700, Washington, District of Columbia, 20005), within 45 days after entry of the contempt adjudication and again upon termination of the posting period, showing what steps have been taken to comply with this Court's directives.

4. That in order to assure against further violations of this Court's judgment, this Court impose a prospective non-compliance fine of \$5,000.00 against Respondent for each and every future violation of this Court's February 27, 2013 judgment and contempt adjudication, and a further fine of \$500.00 per day for each day this Court finds the violations have continued; and impose a prospective fine of \$1,000.00 per violation and \$100.00 per day against any other officer, agent or attorney of Respondent who, in active concert and participation with Respondent, and with notice and knowledge of this Court's February 27, 2013 judgment and contempt adjudication, violates the judgment or contempt adjudication, said fines not to be reimbursed by Respondent. The fines may only be imposed as a result of the Board instituting a new civil contempt proceeding in this Court, in which the Board shall be required to establish its allegations by clear and convincing evidence.

5. That upon the failure of Respondent to purge itself of contempt, this Court issue a writ of body attachment against any representative or agent of Respondent responsible for non-compliance, and to take such other actions and grant such other relief as may be just, reasonable, and proper to assure compliance with this Court's judgment and as this proceeding in civil contempt may require.

NATIONAL LABOR RELATIONS BOARD

s/ David H. Mori
BARBARA A. O'NEILL
Deputy Assistant General Counsel
Contempt, Compliance & Special Litigation Branch
(202) 273-2958

DAVID H. MORI
Senior Trial Attorney
Tel: (202) 273-3743
Fax: (202) 273-4244
david.mori@nrlrb.gov

Dated at Washington, D.C.
this 25th day of March, 2014.

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2014, I sent, via first-class mail, a copy of the aforementioned Petition for Adjudication in Civil Contempt and for Other Civil Relief to Open Door Retail Group, Inc., at 10 Kemah Waterfront Street, Suite M, Kemah, Texas, 77565. I have also made arrangements to have a process server personally deliver a copy of the petition to this same address.

s/ David H. Mori
David H. Mori, Senior Trial Attorney
National Labor Relations Board
Contempt, Compliance & Special Litigation Branch
1099 14th Street, NW, Suite 10700
Washington, DC 20005
Tel: (202) 273-3743
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David.Mori@NLRB.gov

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 13-60006

NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

OPEN DOOR RETAIL GROUP, INCORPORATED,

Respondent

Application for Summary Entry of a Judgment
Enforcing Orders of the National Labor Relations Board

Before HIGGINBOTHAM, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:

IT IS ORDERED that petitioner's application for summary entry of a judgment enforcing the February 23, 2012, and September 10, 2012, orders of the National Labor Relations Board is *GRANTED*.

oad *rp* *Les*



UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

OPEN DOOR RETAIL GROUP, INC.

Respondent

:
:
: No. #13-60006
:
: Board Case No.:
: 16-CA-028083
:
:

JUDGMENT ENFORCING ORDERS OF THE
NATIONAL LABOR RELATIONS BOARD

Before: HIGGINBOTHAM, OWEN, and SOUTHWICK, Circuit Judges.

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Open Door Retail Group, Inc., its officers, agents, successors, and assigns, enforcing its Order and Supplemental Order dated February 23, 2012, and September 10, 2012, respectively, in Case No. 16-CA-028083, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Open Door Retail Group, Inc., its officers, agents, successors, and assigns, shall abide by the Board's Order of February 23, 2012. (See Attached Order and Appendix)

It is further ORDERED AND ADJUDGED by the Court that Respondent, Open Door Retail Group, Inc., Kemah, Texas, its officers, agents, successors, and assigns, shall make whole Vanda Jordan, by paying her in the amount of \$14,431, plus additional net backpay which accrues to the date the Respondent makes her a valid offer of reinstatement, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), and minus tax withholdings required by Federal and State laws.

Total Backpay Due \$14,431

Mandate shall issue forthwith.

NATIONAL LABOR RELATIONS BOARD

v.

OPEN DOOR RETAIL GROUP, INC.

ORDER

Open Door Retail Group, Inc., Kemah, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Discharging or otherwise discriminating against employees because they engaged in concerted activities for the purposes of mutual aid and protection, and to discourage employees from engaging in concerted activities.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
 2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Within 14 days from the date of this Order, offer Vanda Jordan full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.
 - (b) Make Vanda Jordan whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.
 - (c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Vanda Jordan and, within 3 days thereafter, notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.
 - (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such
-

records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

- (e) Within 14 days after service by the Region, post at its Kemah, Texas facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 22, 2011.
- (f) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in concerted activities for the purpose of mutual aid and protection or to discourage employees from engaging in these and other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Vanda Jordan full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Vanda Jordan whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Vanda Jordan, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

OPEN DOOR RETAIL GROUP, INC.

Westlaw

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358 NLRB No. 9, 192 L.R.R.M. (BNA) 1451, 2012 WL 594802 (N.L.R.B.)

NATIONAL LABOR RELATIONS BOARD (N.L.R.B.)

*1 OPEN DOOR RETAIL GROUP, INC.
AND
VANDA JORDAN.

Case 16-CA-28083

February 23, 2012

SUMMARY

The Acting General Counsel sought a default judgment in this case on the ground that the respondent failed to file an answer to the complaint. The Board ordered the respondent to cease and desist from discharging or otherwise discriminating against employees because they engaged in concerted activities for the purposes of mutual aid and protection, and to discourage employees from engaging in concerted activities and interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by the Act. Charge filed by an individual. Chairman Pearce and Members Hayes and Griffin participated.

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND GRIFFIN

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Vanda Jordan on June 29, 2011, the Acting General Counsel issued a complaint on December 15, 2011, against

Open Door Retail Group, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. The Respondent failed to file an answer.

On January 6, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on January 9, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On February 2, 2012, the Board issued a Revised Notice to Show Cause, noting that the original notice was not served on the Respondent at all of its known addresses. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by December 29, 2011, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated December 30, 2011, advised the Respondent that unless an answer was received by January 6, 2012, the Region would seek default judgment in this case based on the Respondent's failure to respond to the complaint allegations. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer to the complaint, we deem the allegations in the complaint and notice of hearing to be admitted as true,



and we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas corporation, with places of business located in Kemah, Texas, has been engaged in the business of operating various retail stores including an art gallery, candy store, and souvenir shop along the Kemah Boardwalk.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations described Ron Larson

Mike Baron

On about June 20 and 21, 2011, the Respondent's employee, Vanda Jordan, engaged in concerted activities with other employees for the purposes of mutual aid and protection by discussing with her coworkers an oral reprimand she received from owner Ron Larson as a result of a secret shopper report conducted at the Respondent's Violets Are Blue retail store.

On about June 22, 2011, the Respondent discharged Vanda Jordan.

The Respondent discharged Jordan because Jordan engaged in concerted activities for the purposes of mutual aid and protection, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in

above, derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

***2** At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act, and/or agents of the Respondent within the meaning of Section 2(13) of the Act:

Owner

Operations Manager

violation of Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by discharging Vanda Jordan because she engaged in protected concerted activities, we shall order the Respondent to offer Jordan full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and to make Jordan whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful actions against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as

prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).^[FN1]

The Respondent shall also be required to remove from its files any reference to the unlawful discharge of Vanda Jordan and to notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

ORDER

***3** The National Labor Relations Board orders that the Respondent, Open Door Retail Group, Inc., Kemah, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engaged in concerted activities for the purposes of mutual aid and protection, and to discourage employees from engaging in concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Vanda Jordan full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Vanda Jordan whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of

this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Vanda Jordan and, within 3 days thereafter, notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Kemah, Texas facility copies of the attached notice marked "Appendix."^[FN2] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.^[FN3] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 22, 2011.

***4** (f) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to

comply.

Dated, Washington, D.C. February 23, 2012

Mark Gaston Pearce
Chairman

Brian E. Hayes
Member

Richard F. Griffin, Jr.
Member

FN1. In the complaint, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. Further, the Acting General Counsel requests that the Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid it will be allocated to the appropriate periods. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), enf'd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

FN2. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FN3. For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in concerted activities for the purpose of mutual aid and protection or to discourage employees from engaging in these and other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Vanda Jordan full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

*5 WE WILL make Vanda Jordan whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Vanda Jordan, and WE WILL,

within 3 days thereafter, notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

OPEN DOOR RETAIL GROUP, INC.

358 NLRB No. 9, 192 L.R.R.M. (BNA) 1451, 2012 WL 594802 (N.L.R.B.)

END OF DOCUMENT

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358 NLRB No. 123, 194 L.R.R.M. (BNA) 1007, 2012 WL
3947381 (N.L.R.B.)

NATIONAL LABOR RELATIONS BOARD (N.L.R.B.)

*1 OPEN DOOR RETAIL GROUP, INC.
AND
VANDA JORDAN

Case 16-CA-028083

September 10, 2012

SUMMARY

The Acting General Counsel sought a default judgment in this case on the ground that the respondent failed to file an answer to the compliance specification. A controversy having arisen over the amount of backpay due the discriminatee, the Regional Director issued a compliance specification and notice of hearing alleging the amount due under the Board's order and notifying the respondent that it must file a timely answer complying with the Board's rules and regulations. Although properly served with a copy of the compliance specification, the respondent failed to file an answer. In its Supplemental Decision and Order, the Board ordered the employer to pay the discriminatee the amount owed plus interest accrued to the date of payment.

Charge filed by an individual. Chairman Pearce and Members Griffin and Block participated.

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On February 23, 2012, the National Labor Relations Board issued a Decision and Order,^[FN1] that, among other things, ordered the Respondent to make whole discriminatee Vanda Jordan for any loss of earnings and other benefits resulting from her unlawful termination in violation of Section 8(a)(1) of the Act.

A controversy having arisen over the amount of backpay due the discriminatee, on May 31, 2012, the Regional Director issued a compliance specification and notice of hearing alleging the amount due under the Board's Order and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated June 22, 2012, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by June 29, 2012, default judgment would be sought. To date, the Respondent has not filed an answer.

On July 10, 2012, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached. On July 13, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 16, 2012, the Board issued a Revised Notice to Show Cause, noting that the original notice was not served on the Respondent at all of its known addresses. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its



authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to

Total Backpay Due

Dated, Washington, D.C. September 10, 2012

Mark Gaston Pearce
Chairman

Richard F. Griffin, Jr.
Member

Sharon Block
Member

FN1. 358 NLRB No. 9.

358 NLRB No. 123, 194 L.R.R.M. (BNA) 1007, 2012 WL 3947381 (N.L.R.B.)

END OF DOCUMENT

be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due Vanda Jordan is as stated in the compliance specification, and we will order the Respondent to pay those amounts to Vanda Jordan, plus interest to the date of payment.

ORDER

*2 The National Labor Relations Board orders that the Respondent, Open Door Retail Group, Inc., Kemah, Texas, its officers, agents, successors, and assigns, shall make whole Vanda Jordan, by paying her in the amount of \$14,431, plus additional net backpay which accrues to the date the Respondent makes her a valid offer of reinstatement, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), and minus tax withholdings required by Federal and State laws.

\$14,431

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

OPEN DOOR RETAIL GROUP, INC.

Respondent.

No. 13-60006

AFFIDAVIT

I, Charlene R. Donovan, do hereby depose and state as follows:

1. I am employed as a Compliance Officer for the National Labor Relations Board (the "Board"), Houston Resident Office, located at 1919 Smith Street, Suite 1545, Houston, Texas, 77002.

2. As part of my duties as a Compliance Officer, I am responsible for overseeing and ensuring the collection of debts owed to the Board pursuant to orders of the Board and judgments entered by various courts.

3. Respondent Open Door Retail Group, Inc., is a Texas corporation that operates retail stores, including an art gallery, along the Kemah Boardwalk in Kemah, Texas.

4. On February 27, 2013, this Court entered its judgment enforcing two decisions of the National Labor Relations Board issued on February 23, 2012, and September 10, 2012. The court judgment requires Respondent to, *inter alia*, offer Vanda Jordan, whom the Board ruled was unlawfully discharged by Respondent, full reinstatement to her former job or to a substantially equivalent position and pay her backpay in the amount of \$14,431.00, plus additional net backpay accruing to the date



that she is made a valid offer of reinstatement, plus interest accruing to the date of payment.

5. On March 15, 2013, the Board's Houston Resident Office sent a letter to Ron Larson, Respondent's owner and president, outlining the obligations set forth in the Court's February 27, 2013 judgment. The letter, enclosed with a copy of the judgment, was mailed to Respondent's P.O. Box in Houston and to its art gallery on the Kemah Boardwalk. (Attachment A.) In addition, I personally hand-delivered a copy of this letter, along with a copy of the judgment, to the art gallery on March 19, 2013. The letter was received by an individual named Jeri Davis on behalf of the art gallery. (Attachment B.)

6. Having received no response from Larson to the March 15, 2013 letter above, the Board's Contempt, Compliance & Special Litigation Branch ("CCSLB") in Washington, D.C., sent a follow-up letter to Larson on August 20, 2013. (Attachment C.) The letter, enclosed with a copy of the February 27, 2013 judgment, was sent to Respondent's P.O. Box in Houston and to its art gallery on the Kemah Boardwalk, advised Respondent that CCSLB would take appropriate action, including possibly initiating contempt proceedings, should it persist in its failure to comply with the judgment. CCSLB Attorney Edward Swidriski confirmed the art gallery's receipt of this letter in a telephone conversation with the gallery's operations manager. (Attachment D.)

7. To date, Respondent has not complied with any provision of the Court's judgment.

CPD

8. As of February 28, 2014, the total amount due and owing under the judgment is \$16,462.00, which includes additional net backpay and interest calculated as follows:

Outstanding Judgment Debt	\$14,431.00
Additional Net Backpay Accrued Through February 28, 2014	\$954.00
Interest Accrued through February 28, 2014	<u>\$1,077.00</u>
Outstanding Total	\$16,462.00

I hereby affirm under penalty of perjury that the statements herein are true and correct.

Charlene R. Donovan

Charlene R. Donovan, Compliance Officer
National Labor Relations Board
Houston Resident Office
1919 Smith Street, Suite 1545
Houston, Texas, 77002.

Executed on this 6th day in March, 2014.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 16
1919 SMITH ST
STE 1545
HOUSTON, TX 77002-8051

Agency Website: www.nlrb.gov
Telephone: (713)209-4888
Fax: (713)209-4890

Agent's Direct Dial: (713)209-4885

March 15, 2013

RON LARSON, PRESIDENT
OPEN DOOR RETAIL GROUP, INC.
PO BOX 590043
HOUSTON, TX 77259-0043

OPEN DOOR RETAIL GROUP, INC.
KINKADE ART GALLERY
ATTN: RON LARSON
10 KEMAH WATERFRONT, STE M
KEMAH, TX 77565

Re: Open Door Retail Group, Inc.
Case 16-CA-028083
358 NLRB No. 9 and 358 NLRB No. 123

Dear Mr. LARSON:

Enclosed is a copy of the Judgment of the United States Court of Appeals for the Fifth Circuit enforcing the Board's February 23, 2012 Decision and Order and the Board's September 10, 2012 Supplemental Decision and Order in the above matter. This letter discusses what Respondent needs to do to comply with the Board's Order and Supplemental Order.

Post Notice: Enclosed are 15 copies of the Notice to Employees. A responsible official of the Respondent, not Respondent's attorney, must sign and date the Notices before posting them. The Notices should be conspicuously displayed where notices to employees are customarily posted for a period of 60 consecutive days at Respondent's facility in Kemah, Texas. Respondent must take reasonable steps to ensure that the Notices are not altered, defaced or covered by other material. If additional Notices are required, please let me know. During the posting period, a member of the Regional Office staff may visit Respondent's facility to inspect the Notices.

In addition to physical posting of the Notice, Respondent is required to post the Notice electronically or distribute it electronically to the employees, if Respondent customarily communicates with its employees by electronic means. Please provide this office with the address of the intranet posting, if the Notice is posted on an intranet website. If the Notice is emailed to employees, please send a copy of the email to me at Charlene.Donovan@nlrb.gov, with the email addresses of the employees to whom it was sent. If Respondent does not customarily communicate with its employees by electronic means, please state so on the enclosed Certification of Compliance.

Attachment A

Open Door Retail Group, Inc.
Case 16-CA-028083

- 2 - March 15, 2013

Remedial Actions:

Backpay: The Board's Supplemental Order provides that Respondent will make whole Vanda Jordan by paying her backpay of \$14,431, plus additional net backpay which accrues to the date Respondent makes her a valid offer of reinstatement, plus daily compound interest accrued to the date of payment, minus tax withholdings as required by Federal and State laws. I would like to meet with you to review and discuss the appropriate formula for calculating the additional amount of backpay due. Please contact me at your earliest convenience to arrange a mutually convenient time for that discussion.

Reinstatement: The Board order provides that Respondent will offer Vanda Jordan immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed. Please document and/or certify, in writing, that compliance with this affirmative provision of the Board order has been accomplished.

Expungement of Records: The Board Order further provides that Respondent will expunge from its records any reference of the discharge of Vanda Jordan and notify her in writing that this has been done and that her discharge will not be used against her in future personnel actions. Respondent should provide this office with a copy of the letter notifying her of this expungement.

Certification of Compliance: A Certification of Compliance form is enclosed. This form, containing information about the steps being taken to comply with the Board Order and where and when the Notices were posted, should be returned **with four (4) signed and dated Notices within 21 days of the date of this letter.**

Closing the Case: When all of the affirmative terms of the Board's Order and Supplemental Order have been fully complied with and there are no reported violations of the negative provisions, you will be notified that the case has been closed on compliance. Timely receipt of the signed and dated Notices and required Sworn Certification of Compliance will assist us in closing the case in a timely manner.

Open Door Retail Group, Inc.
Case 16-CA-028083

- 3 - March 15, 2013

Your cooperation in this matter will be appreciated.

Very truly yours,

/s/ Charlene Donovan

CHARLENE R. DONOVAN
Compliance Officer

Enclosures: Court Judgment
Board Decision and Order
Board Supplemental Decision and Order
Notices
Certification of Compliance Form

BY CERTIFIED AND REGULAR MAIL



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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March 15, 2013

RON LARSON, PRESIDENT
OPEN DOOR RETAIL GROUP, INC.
PO BOX 590043
HOUSTON, TX 77259-0043

OPEN DOOR RETAIL GROUP, INC.
KINKADE ART GALLERY
ATTN: RON LARSON
10 KEMAH WATERFRONT, STE M
KEMAH, TX 77565

Re: Open Door Retail Group, Inc.
Case 16-CA-028083
358 NLRB No. 9 and 358 NLRB No. 123

Dear Mr. LARSON:

Enclosed is a copy of the Judgment of the United States Court of Appeals for the Fifth Circuit enforcing the Board's February 23, 2012 Decision and Order and the Board's September 10, 2012 Supplemental Decision and Order in the above matter. This letter discusses what Respondent needs to do to comply with the Board's Order and Supplemental Order.

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In addition to physical posting of the Notice, Respondent is required to post the Notice electronically or distribute it electronically to the employees, if Respondent customarily communicates with its employees by electronic means. Please provide this office with the address of the intranet posting, if the Notice is posted on an intranet website. If the Notice is emailed to employees, please send a copy of the email to me at Charlene.Donovan@nlrb.gov, with the email addresses of the employees to whom it was sent. If Respondent does not customarily communicate with its employees by electronic means, please state so on the enclosed Certification of Compliance.

Attachment B



**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL**

**Division of Legal Counsel
Contempt, Compliance and Special Litigation Branch
1099 14th Street, N.W., Suite 10700
Washington, D.C. 20005**

**Edward D. Swidriski
Direct: 202.273.2891
Facsimile: 202.273.4244
edward.swidriski@nlrb.gov**

August 20, 2013

Transmitted via UPS overnight delivery and Certified Mail

**Ron Larson
Open Door Retail Group, Inc.
Thomas Kinkade Gallery – Kemah
10 Kemah Waterfront, Suite M
Kemah, TX 77565**

**Ron Larson
Open Door Retail Group, Inc.
P.O. Box 590043
Houston, TX 77259**

**Re: No. 13-60006 – *NLRB v. Open Door Retail Group, Inc.* (5th Cir. 2013);
Board Case 16-CA-028083; 13-CLB-73**

Mr. Larson:

This office is currently conducting an investigation in the above-referenced matter. It has come to our attention that Open Door Retail Group, Inc. ("Open Door") has failed and refused to comply with the February 27, 2013 judgment and order of the United States Court of Appeals for the Fifth Circuit, of which you were notified by the NLRB's Region 16 office several months ago. Indeed, we understand that Open Door has failed to even respond to Region 16's attempts at obtaining said compliance. For your reference, we have enclosed with this letter a copy of: (1) the Fifth Circuit's judgment and order; and (2) Region 16's March 15, 2013 letter to you discussing what steps must be taken to come into compliance with the Board's court-enforced orders.

Unless Open Door promptly comes into compliance, the Board intends to take appropriate action. This may include initiating contempt proceedings and seeking, in addition to its costs and attorney fees, the imposition of prospective fines and imprisonment of responsible company officials. Should you intend to avail yourself of this final opportunity to remedy Open Door's noncompliance with the court's

Ltr. to R. Larson
August 20, 2013

order and judgment, please contact the undersigned by no later than noon on Thursday, August 29, 2013.

Sincerely,

Edward D. Swidriski

Edward D. Swidriski
Honors Attorney
(202) 273-2891
Edward.Swidriski@nlrb.gov

Enclosures.

Mori, David H.

From: O'Neill, Barbara A.
Sent: Wednesday, March 05, 2014 11:57 AM
To: Mori, David H.
Subject: FW: Open Door -- Note to File 9/5/13

From: Swidriski, Edward D.
Sent: Thursday, September 05, 2013 1:11 PM
To: O'Neill, Barbara A.
Subject: RE: Open Door -- Note to File 9/5/13

Note to File: Following up on the call I made to Kinkade at Kemah yesterday (281-334-4808), I spoke today to a woman named Geri who identified herself as the store's operations manager. She confirmed that she received the documents we sent to Mr. Larson via UPS on 8/22/2013. She stated that she had forwarded them to him. She also referred to Larson as the owner/dealer. I asked to get in touch with Larson, but she would only take my information, which I gave her.

Houston, TX

NLRB Case No. 16-CA-028083

AFFIDAVIT

I, Vanda Jordan, hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this affidavit will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce the affidavit in connection with a formal proceeding.

I reside at 714 Voyager Drive, Houston, Texas, 77062.

My telephone number is (281) 804-6199.

I am the named individual in the February 27, 2013 judgment of the United States Court of Appeals for the Fifth Circuit against Open Door Retail Group, Inc. ("Open Door"), in Case No. 13-60006.

As of the present date, Open Door has not made me an offer of reinstatement to my former job or to a substantially equivalent position, as required by the court judgment. Moreover, as of the present date, Open Door has not paid me any amount owed under the court judgment.

Lastly, as of the present date, Open Door has not notified me in writing that any reference to my unlawful discharge has been removed from its files and that the unlawful discharge will not be used against me in any way, as required by the court judgment.

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I have read this statement consisting of 2 pages, including this page. I fully understand its contents and I declare under penalty of perjury that the foregoing statement is true and correct.

2/5/14
Date

Vanda Jordan
Signature